

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 DEBRA VANESSA WHITE,

11 Plaintiff,

v.

12 RELAY RESOURCES and GENERAL
13 SERVICES ADMINISTRATION,

14 Defendants.

CASE NO. C19-0284-JCC

ORDER

15 This matter comes before the Court on Defendant CSDVRS, LLC’s (“ZVRS”) motion to
16 dismiss (Dkt. No. 59). Having considered the parties’ briefing and the relevant record, the Court
17 STRIKES Plaintiff’s amended complaint (Dkt. No. 47) in its entirety and DENIES ZVRS’s
18 motion to dismiss as moot.
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20 **I. BACKGROUND**

21 The Court previously set forth the underlying facts of this case and will not repeat them
22 here. (*See* Dkt. No. 40 at 1–3.) On July 9, 2019, the Court dismissed all but one of Plaintiff’s
23 claims against Defendants General Services Administration (“GSA”) and Relay Resources. (*See*
24 Dkt. Nos. 40–41.) In doing so, the Court granted Plaintiff leave to amend her breach of contract
25 claim. (*See* Dkt. Nos. 40 at 5–7, 41 at 7.) Plaintiff subsequently filed an amended complaint, but
26 she did not amend her breach of contract claim. (*See* Dkt. No. 47.) Instead, Plaintiff added

1 several new defendants, including ZVRS, and asserted 10 new claims. (*See id.*) ZVRS now
2 moves to dismiss Plaintiff’s claims against it on the grounds that (1) the amended complaint fails
3 to state a claim against ZVRS, (*see* Dkt. No. 59 at 5–9), and (2) Plaintiff failed to properly serve
4 ZVRS, (*see id.* at 4–5).

5 **II. DISCUSSION**

6 **A. The Court’s Treatment of Plaintiff’s Amended Complaint**

7 As the Court previously explained in a different order, the Court will construe Plaintiff’s
8 amended complaint as a motion for leave to amend. (*See* Dkt. No. 80 at 2–4). Accordingly, the
9 Court must analyze Plaintiff’s implied “motion” under Rule 15(a) instead of Rule 12(b).

10 Rule 15(a)(2) states that “[the] court should freely give leave [to amend] when justice so
11 requires.” However, leave “need not be granted where the proposed amendment is futile.”
12 *Nordyke v. King*, 644 F.3d 776, 788 n.12 (9th Cir. 2011). A proposed amendment is futile if it
13 would be “subject to dismissal.” *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir.
14 1998). The test for whether a proposed amendment is futile is, therefore, identical to the test for
15 whether a pleading survives a challenge under Rule 12(b)(6).¹ *See Nordyke*, 644 at 788 n.12
16 (citing *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988)). Accordingly, Plaintiff
17 must allege sufficient facts, accepted as true, to state a claim for relief that is plausible on its
18 face. *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). A claim has facial plausibility when a
19 plaintiff pleads factual content that allows the court to draw the reasonable inference that each
20 defendant is liable for the misconduct alleged. *Id.* at 678.

21 **B. The Merits of Plaintiff’s New Claims**

22 Plaintiff proposes to add 10 claims against ZVRS. For the reasons explained below, the
23 Court finds that those claims are futile.

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26 ¹ Given that the tests are identical, the Court will treat ZVRS’s arguments under 12(b)(6) as
arguments for why Plaintiff’s proposed amendments are futile.

1 1. Count I

2 In Count I, Plaintiff brings a claim under 18 U.S.C. § 371 for “Defrauding the United
3 States.” (See Dkt. No. 47 at 8.) But Plaintiff fails to allege how ZVRS defrauded the United
4 States. Plaintiff’s amended complaint mentions ZVRS only three times: once to provide
5 information about the company, (see Dkt. No. 47 at 3); once to state that “Vanessa White” is “the
6 name used at . . . ZVRS,” (see *id.*); and once to explain that ZVRS provides telecommunications
7 services for federal agencies, including GSA, (see *id.* at 6). These fleeting references do not
8 establish that ZVRS engaged in any type of fraud. More importantly, 18 U.S.C. § 371 “do[es]
9 not provide for a private right of action.” *Henry v. Universal Tech. Inst.*, 559 Fed. App’x 648,
10 650 (9th Cir. 2014). Count I therefore fails to state a claim.

11 2. Count II

12 For Count II, Plaintiff brings a claim under 18 U.S.C. Chapter 47. Chapter 47, like the
13 rest of the United States Criminal Code, “provide[s] no basis for civil liability.” *See Aldabe v.
14 Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Accordingly, Count II fails to state a claim.

15 3. Count III

16 Count III appears to be a due process claim. Plaintiff alleges that “Defendants” violated
17 her “liberty to work” by “treating [her] as if she is a criminal . . . and requir[ing] [her] to provide
18 an opportunity to appeal to EEOC and GSA EEO to explain her side of the story.” (See Dkt. No.
19 47 at 9.) However, Plaintiff fails to allege that ZVRS acted in a way that violated Plaintiff’s due
20 process rights. (See *id.*) Nor is it plausible that ZVRS could have done so given that Relay
21 Resources and GSA, not ZVRS, were Plaintiff’s alleged employers. (See *id.* at 7.) Accordingly,
22 Count III fails to state a claim against ZVRS. *See Iqbal*, 556 U.S. at 676 (“[A] plaintiff must
23 plead that each . . . defendant . . . has violated the Constitution.”).

24 4. Count IV

25 Count IV is a claim for “Violation of the Wagner Act Known as the National Labor
26 Relations Act of (1935).” (See Dkt. No. 47 at 9–10.) The National Labor Relations Board has

1 exclusive jurisdiction over claims brought under the NLRA for unfair labor practices by
2 employers. *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 108 (1989). Count
3 IV therefore fails to state a claim over which the Court has jurisdiction.

4 5. Count V

5 In Count V, Plaintiff alleges that Defendants violated Title VII by refusing to enter into a
6 contract with Plaintiff because of her “deaf accent.” (*See* Dkt. No. 47 at 10.) A person’s accent
7 can sometimes serve as a proxy for their race or national origin. *See Conti v. Corp. Servs. Group,*
8 *Inc.*, 2013 WL 2297140, slip op. at 7 (W.D. Wash. 2013) (citing *Fragrante v. City & County of*
9 *Honolulu*, 888 F.2d 591, 596 (9th Cir. 1989)) (“[B]ecause accent is often tied to national origin
10 in a way that language ability is not, the law is suspicious of decisions based on accent.”).
11 Accordingly, discrimination based on a person’s accent can be actionable under Title VII. *See id.*
12 at 7–8. Yet, Title VII does not prohibit discrimination based on a person’s disability. *See* 42
13 U.S.C. § 2000e-2. And in this case, Plaintiff’s “deaf accent” serves as a proxy for (or is a part of)
14 her disability—not her race or national origin. As a result, Count V fails to state a claim.

15 6. Count VI

16 Count VI is a restatement of Plaintiff’s disability discrimination claim from her original
17 complaint. (*Compare* Dkt. No. 47 at 10–11, *with* Dkt. No. 3 at 12–16.) Those claims relate to
18 Relay Resources and GSA, who were Plaintiff’s alleged employers; the claims do not in any way
19 relate to ZVRS, who was merely GSA’s vendor. (*See* Dkt. No. 47 at 7.) Accordingly, Count VI
20 does not state a claim against ZVRS.

21 7. Count VII

22 For Count VII, Plaintiff cites 29 C.F.R. § 1606.7, appears to allege that GSA required her
23 to “Speak English” (as opposed to sign language), and concludes that this is why the agency
24 refused to enter into a contract with her. (*See* Dkt. No. 47 at 11–12.) These allegations do not
25 relate to ZVRS. Moreover, § 1606.7 does not provide an additional private cause of action.
26 Section 1606.7, like all Equal Employment Opportunity Commission guidelines, does not have

1 the force of law; it merely reflects “a body of experience and informed judgment to which courts
2 and litigants may properly resort for guidance.” *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125, 141–42
3 (1976); *see also Albemarle Paper Co. v. Moody*, 422 U.S. 405, 431 (1975).

4 8. Count VIII

5 Plaintiff labels Count VIII “Negligence/Misrepresentation.” (*See* Dkt. No. 47 at 12.) The
6 factual allegations in Count VIII are impossible for the Court to decipher. Those allegations are
7 as follows:

8 69. Defendant knew of this circumstances or requirements of the telephone at the
9 time the contract was prepare for the Plaintiff.

10 70. Without a contract in place, Vanessa can’t use the computer at GSA.

11 71. Without a contract in place, RR and GSA will not obtain a videophone.

12 72. Reiteration in her social media account and Apple ID cause damages to her in
13 not having communication access at home.

14 73. As a promate usof defendant’s actions, Plaintiff has suffered lost wages and
15 benefits.

16 These allegations fail to state a claim for negligence, negligent misrepresentation, or any
17 other cause of action of which the Court is aware. *See Ranger Ins. Co. v. Pierce County*,
18 192 P.3d 886, 889 (Wash. 2008) (listing the elements for negligence); *Merriman v. Am.
19 Guarantee & Liab. Ins. Co.*, 396 P.3d 351, 360–61 (Wash. Ct. App. 2017) (listing the
20 elements for negligent misrepresentation).

21 9. Count IX

22 Count IX purports to be a claim under the Racketeer Influenced and Corrupt
23 Organization Act, 18 U.S.C. §§ 1961–1968. To state a claim under RICO, a plaintiff must allege
24 “one or more defendant ‘persons’ conducted or participated in the activities of an ‘enterprise’
25 through a pattern of racketeering activity consisting of at least two predicate acts cognizable
26 under RICO.” *Capitol West Appraisals, LLC v. Countrywide Fin. Corp.*, 759 F. Supp. 2d 1267,

1 1272 (W.D. Wash. 2010). These allegations must be made “with particularity” and must include
2 “the who, what, when, where, and how,’ of the misconduct charged.” *See id.* at 1271 (quoting
3 *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1104–05 (9th Cir. 2003)). Count IX, however,
4 does not state with particularity the wrongful acts that ZVRS engaged in. Count IX instead
5 begins with an unclear statement about “Defendants[’]” efforts to “manipulate the legal system.”
6 (*See* Dkt. No. 47 at 13–14.) It then asserts that “Defendants have actively sought to hamper
7 government anti-extremists by direct propaganda.” (*See id.*) Finally, Count IX ends by listing
8 provisions of the United States Code that Defendants have allegedly violated. (*See id.*) These
9 allegations do not satisfy the pleading standard for a civil RICO claim. *See Capitol West*
10 *Appraisals*, 759 F. Supp. 2d at 1271–72.

10. Count X

Count X is titled “Americans with Disability Notification Act of 2011.” (See Dkt. No. 47 at 14.) “[T]he ADA Notification Act has been introduced multiple times . . . [but it] never became law.” *Raetano v. Kally K’s, Inc.*, 2009 WL 651808, slip op. at 7 n.3 (M.D. Fla. 2009). The Act cannot, therefore, provide the basis for any claim in this case.

III. CONCLUSION

17 For the foregoing reasons, the Court concludes that it would be futile for Plaintiff to
18 amend her complaint to add claims against ZVRS. The Court therefore DENIES Plaintiff leave
19 to amend and, in light of its prior orders, STRIKES her amended complaint (Dkt. No. 47) in its
20 entirety. (*See* Dkt. Nos. 80–81.) The Court also DENIES ZVRS’s motion to dismiss (Dkt. No.
21 53) as moot. Finally, the Court DISMISSES ZVRS from the case.

DATED this 31st day of October 2019.

John C. Conahan

John C. Coughenour
UNITED STATES DISTRICT JUDGE